

INFORMATION TECHNOLOGY INDUSTRY COUNCIL

November 17, 1998

Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Ex parte Letter in CC Docket No. 96-198

Dear Secretary Salas:

In late September of this year, members of the Information Technology Industry Council ("ITI") met separately with the Disabilities Task Force, Commissioner Furchtgott-Roth, and members of the Commissioners' staffs to discuss ITI's position on Section 255, and the Commission's proposed rules. ITI was encouraged by the Commission's appreciation of equipment manufacturer's concerns. We were also encouraged by the Commission's recognition that the most effective rules will be those that protect the needs of those with disabilities without impeding or curtailing the progress and innovation that characterizes the information technologies ("IT") marketplace.

During the meetings, ITI emphasized the unique nature of the "plug and play" environment of IT markets, which spurs competition, innovation, a wider variety of specialized products, and broader consumer choice, enabling individuals with disabilities to customize information technologies systems to meet their individual needs. ITI urged the Commission to adopt flexible rules that will (a) permit Section 255 compliance through accessibility in product families, marketwide availability, and compatible products; (b) adhere to Congress's express language and intent in determining the scope of the rules; (c) apply a "direct control" approach in allocating manufacturer responsibility; and (d) establish constructive, not destructive, problem resolution mechanisms.

In light of our various discussions and after further consideration of the issues raised during those discussions, ITI wishes to follow up on two points.

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First, ITI modifies its position on the enforcement procedures advocated in the NPRM. In its initial and reply comments, ITI advocated mandatory, initial contact with the manufacturer before allowing a complainant to file a Section 255 complaint. During its meetings at the Commission, ITI expressed concern that, while the Commission proposed to "encourage consumers" to first contact manufacturers before proceeding with a "fast track" complaint, such encouragement may amount to little more than a *pro forma* recommendation. In short, ITI was concerned that every call to the Commission would effectively be treated as an FCC complaint.

Our discussions with the Disabilities Task Force, in particular, indicate otherwise. The Task Force's description of how it currently addresses Section 255 complaints appears reasonable and sensitive to ITI's concern that manufacturers be given an opportunity to first address and resolve accessibility inquiries or consumer dissatisfaction before they rise to the level of a "fast-track" complaint. ITI urges only that the Commission provide clear guidance in its Report and Order regarding the protocol that the Commission staff will follow when addressing Section 255 inquiries - *i.e.*, that an initial call will be treated as a complaint (triggering the fast-track deadlines) only after the Staff first attempts to discern the nature of the caller's query, provides adequate information on how to initiate contact with the manufacturer, encourages the caller to do so, and concludes that it is the caller's explicit wish to proceed with a complaint.

Second, ITI urges the Commission to adhere to the express language in Section 255 as well as the findings of the Access Board in determining the extent to which multi-use equipment should be subject to Section 255. As ITI argued in its comments, Congress's language is unambiguous. Section 255 refers to telecommunications equipment and customer premises equipment only. Consistent with the statute, the Access Board concluded that

[i]nformation services are not covered by these guidelines. The Act defines what is telecommunications equipment and customer premises equipment. If a product "originates, routes or terminates telecommunications" it is covered whether the product does that most of the time or only a small portion of the time. *Of course, only the functions directly related to a product's operation as telecommunications equipment or customer premises equipment are covered by the guidelines.*

Telecommunications Act Accessibility Guidelines, 63 Fed. Reg. 5608 at 5612 (Architectural and Transportation Barriers Compliance Board, Feb. 3, 1998) (emphasis added).

While ITI sympathizes with the difficult task that lies ahead for the Commission in trying to parse out the equipment functions associated with TE or CPE and those which are used in connection with the provision of information services, ITI urges the Commission to adhere strictly to the statute and the Access Board's findings. Lines are hard to draw, but Congress's mandate is clear: Section 255 does not cover equipment or equipment components used solely to provide information services. The Commission should not deviate from this mandate.

Finally, as indicated during our meetings, ITI believes that much of the inaccessibility issues that have thus far surfaced for ITI's members arise from inadequate information for people with disabilities about equipment designed to address their accessibility needs. ITI therefore intends to schedule meetings with disabilities organizations in the hopes of establishing a dialogue that will help both parties understand each other's needs, goals, and concerns. In order to ensure that IT accessibility continues to move in the right direction, ITI has joined the federal advisory committee on accessibility of IT equipment, the Electronic and Information Technology Access Advisory Committee (EITAAC), chartered by the Access Board for the purpose of recommending accessibility standards for IT covered by the Rehabilitation Act Amendments of 1998. In addition, the National Committee for Information Technology Standards, a voluntary standards body for which ITI serves as secretariat, has established a Study Group for IT Accommodation of People with Disabilities Standardization. The Study Group, which is open to the public, will work toward developing protocols and related specifications to support interfaces between accessibility devices and computers. We will update the Commission on any developments relevant to the Section 255 proceeding that arise from these activities.

ITI appreciates the time and effort expended by the Commission in addressing the many complex and sensitive issues raised in this docket. We welcome the opportunity to be of any further assistance.

Please contact the undersigned with any questions.

A handwritten signature in black ink, reading "Fiona J. Branton". The signature is fluid and cursive, with the first name "Fiona" being more prominent and the last name "Branton" following in a similar style.

Fiona J. Branton
Vice President and Chief Counsel
Information Technology Industry Council

Ms. Magalie Roman Salas
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